



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

The tenant filed an Application for Dispute Resolution (the “Application”) on February 10, 2020 seeking an order to cancel the Two Month Notice to End Tenancy (the “Two Month Notice”) for Landlord’s Use of Property. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on April 9, 2020. In the conference call hearing I explained the process and offered the attending party the opportunity to ask questions.

The tenant attended the hearing, and they were provided the opportunity to present oral testimony and make submissions during the hearing. The landlord did not attend the telephone conference call hearing.

To proceed with this hearing, I must be satisfied that the tenant made reasonable attempts to serve the landlord with the Notice of Dispute Resolution for this hearing. This means the tenant must provide proof that the document has been served at a verified address allowed under section 89 of the *Act*, and I must accept that evidence.

The tenant set out how they served this notice to the landlord via registered mail on February 22, 2020. They presented the following evidence to show this: a print of Canada Post registered mail tracking from February 22 to Mar 19; an image of the envelope labelled ‘Unclaimed’ to the landlord’s address; and an image of the registered mailing decal to the landlord’s address. The tenant stated that the package they sent included all the evidence they intended to rely on for this hearing.

The tenant also provided they had a dialogue with the landlord approximately two weeks before the hearing; this follows their earlier voicemail message to the landlord.

The tenant referred the landlord via email to their lawyer. After that, the tenant's lawyer then spoke to the landlord and referred to this current hearing.

I accept the tenant's undisputed evidence that the tracking history showed that the landlord refused the registered mail package; therefore, I find they avoided service. I also accept that the landlord was informed of this scheduled hearing via the tenant's lawyer.

Based on the submissions of the tenant, I accept the landlord was served notice of this hearing and the tenant's application in a manner complying with section 89(1)(c) of the *Act*. The hearing thus proceeded in the landlord's absence.

Issue(s) to be Decided

Is the tenant entitled to an order that the landlord cancel the Two Month Notice?

If unsuccessful in this Application, is the landlord entitled to an Order of Possession of the rental unit?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The tenant submitted the following relevant material:

- A copy of the Tenancy Agreement signed January 16, 2016. This document sets out the monthly rent amount and identifies the rental unit by its address.
- A copy of a prior Tenancy Agreement with the previous landlord, signed September 27, 2014. This document sets out the same rental unit address.
- A copy of the Application – in the hearing the tenant testified that they are still residing in the rental unit.
- A copy of the Two Month Notice signed by the landlord on January 26, 2020 – the tenant stated that they received this document on January 27, 2020.

- A photo image of the envelope the landlord used to serve the Two Month Notice to the tenant – the tenant stated that this envelope was left at the side door of the rental unit.

The landlord did not provide documentary evidence for this hearing and did not attend to provide oral testimony.

Analysis

Section 49(3) of the *Act* provides that a landlord may end a tenancy by giving a Two Month Notice “if a landlord or a close family member of the landlord intends in good faith to occupy the rental unit.”

When a landlord issues a Two Month Notice and the tenant files an application to dispute the matter, the landlord bears the burden of proving they have grounds to end the tenancy and must provide sufficient evidence to prove the reason to end the tenancy.

In this case, the Two Month Notice was issued pursuant to section 49(3), and I accept the tenant's undisputed evidence that they received this document on January 27, 2020.

As the tenant's Application was filed on February 10, 2020, I find that they have disputed the Notice within the timeframe required under the *Act*.

In the absence of the landlord or any evidence from the landlord to support the reason listed in the Two Month Notice, I find that it must be cancelled.

For these reasons, I order the Two Month Notice to be cancelled. The tenancy continues until it may otherwise legal end under the *Act*.

Conclusion

For the reasons above, I order the Two Month Notice issued on January 26, 2020 is cancelled and the tenancy remains in full force and effect.

As the tenant was successful in this application, I find the tenant is entitled to recover the \$100.00 filing fee paid for this application. I authorize the tenant to withhold the amount of \$100.00 from one future rent payment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: April 9, 2020

Residential Tenancy Branch